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COUNSEL FOR PETITIONER
Guadalupe Rubbish Disposal Company

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Guadalupe Rubbish Disposal Company, Inc.	:	No.:
Petitioner,	:	Guadalupe Rubbish Disposal Company,
	:	Inc.'s Petition for State Water Resources
v.	:	Control Board Review Pursuant to Water
	:	Code §13320
California Regional Water Quality Control	:	
Board, San Francisco Bay Region,	:	
Respondent.	:	

Pursuant to California Water Code Section 13320 and corresponding California Environment
 Codified Regulations, Guadalupe Rubbish Disposal Company, Inc. ("GRDC") hereby files this
 Petition for review by the State Water Resources Control Board ("SWRCB"). Cal. Water Code
 §13320; 23 Cal. Code Reg. §2050. GRDC requests that the SWRCB hold this Petition in abeyance
 while negotiations between the above parties continue.

1 **1. GRDC Request's Review and Subsequent Withdrawal of Water Code Section 13267**
2 **Technical Report Requirement Issued by the Regional Water Board**

3
4 GRDC hereby petitions the SWRCB to review the Technical Report Requirement presented
5 in a letter issued pursuant to California Water Code Section 13267 from the California Regional
6 Water Quality Control Board, San Francisco Bay Region ("RWQCB"). This letter is dated February
7 1, 2007. A copy of this letter is attached as **Exhibit A**.

8
9 However, GRDC respectfully requests that the SWRCB hold this Petition in abeyance while
10 GRDC and the RWQCB continue to negotiate in good faith. GRDC submits this timely petition to
11 preserve its rights for review of the monitoring order by the SWRCB should the parties be unable to
12 successfully complete negotiations in a reasonable time.

13
14 **2. The Regional Board's Technical Report Requirement Issued Pursuant to the Section**
15 **13267 Letter Must be Withdrawn Because it is Based on Incorrect and Incomplete**
16 **Information**

17
18 The Section 13267 letter seeks information regarding the management of storm water on
19 portions of the Guadalupe Landfill property where historic mining operations occurred. This
20 information has already been provided to RWQCB staff or is very burdensome to develop.
21 Specifically, GRDC has previously provided the RWQCB with information concerning past mining
22 by prior landowners on the property, as well as storm water control measures and monitoring. On
23 multiple occasions, GRDC has sought specific review and feedback from staff. These submissions
24 are still pending review by RWQCB staff. GRDC believes the information submitted adequately
25 addresses the information requirements of the Regional Board.

1 Additionally, GRDC believes the Section 13267 letter is based on a misunderstanding of
2 GRDC's position regarding managing storm water throughout the landfill property, including the
3 areas of historic mining activity. The Section 13267 order wrongly assumes that GRDC seeks to
4 exempt the historic mining areas of the landfill property from coverage under the General Permit for
5 Discharges of Storm Water Associated with Industrial Activities (the "General Permit"). On the
6 contrary, GRDC's Notice of Intent, Storm Water Pollution Prevention Plan ("SWPPP"), and Storm
7 Water Monitoring Plan ("SWMP") cover the entire landfill property, including the areas of inactive
8 mining operations. GRDC is not seeking an exemption from the General Permit.

9
10 The issuance of a Water Code Section 13267 Technical Report Requirement by the RWQCB
11 is premature at best and otherwise unnecessary for the reasons stated above. However, as the parties
12 are currently discussing this matter in good faith, GRDC requests that the SWRCB hold this Petition
13 in abeyance until the conclusion of such negotiations.

14
15 **3. GRDC Is Aggrieved Due to the Improper and Potentially Burdensome**
16 **Technical Report Requirements Presented in the Section 13267 Letter from the**
17 **RWQCB**

18
19 The letter issuing the Section 13267 monitoring requirements by the Regional Board seeks
20 information that potentially is burdensome to develop and prepare. Such requirements are
21 unnecessary in light of the information already provided to the RWQCB and other reasons outlined
22 above. Thus, under the statute, GRDC is an aggrieved party, hereby seeking review by the SWRCB.
23 Cal. Water Code §13320(a).

24
25 //

26 //
27
28

1 **4. The RWQCB and GRDC Are Presently in Negotiations Regarding the**
2 **Technical Report Requirements**

3
4 On February 23, 2007, GRDC submitted a request for reconsideration to the RWQCB in
5 regards to the Technical Report Requirements issued pursuant to the February 1, 2007, Section
6 13267 letter. A copy of the request for reconsideration is attached as **Exhibit B**. GRDC has had
7 follow-up oral communications with Mr. Wolfe, the Executive Officer, and believes a mutually
8 agreeable outcome is possible. However, as GRDC has yet to receive a response from the RWQCB,
9 this Petition is filed to preserve GRDC's right to appeal such onerous monitoring requirements,
10 should negotiations between the parties fail. Therefore, GRDC respectfully requests that this
11 Petition be held in abeyance until the dispute under the monitoring order becomes unresolvable at
12 the regional level.

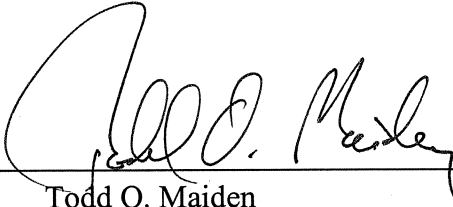
13
14 GRDC also confirms that this Petition has been sent to the RWQCB, San Francisco Region,
15 in accordance with 23 Cal. Code Reg. Section 2050(8). See **Exhibit C**. However, because this
16 Petition is filed to preserve GRDC's rights to appeal the Section 13267 Monitoring Order, GRDC
17 and the Regional Board will continue negotiations to resolve all differences arising from the action
18 of the Regional Board.

19
20 **5. This Petition Should be Held in Abeyance by the SWRQCB, Pending the Outcome of**
21 **Good Faith Negotiations with the Regional Water Board**

22
23 In light of the foregoing reasons, Guadalupe Rubbish Disposal Company hereby requests that
24 the SWRQCB hold this Petition in abeyance while GRDC and the RWQCB continue to negotiate in
25 good faith. Should a resolution be forthcoming, this Petition for review may be unnecessary.

1 However, GRDC hereby reserves its rights for review by the State Water Resources Quality Control
2 Board pursuant to Water Code Section 13320.

3
4
5 DATED: 2 March 2007.

6
7
8 

9 Todd O. Maiden
10 Counsel for Petitioner Guadalupe Rubbish
11 Disposal Company, Inc.

EXHIBIT A



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

RECEIVED

FEB 8 2007

WM WESTERN GROUP
LEGAL OFFICE

Date: February 1, 2007
WDID No: 243S007368

Guadalupe Rubbish Disposal Company, Inc.
15999 Guadalupe Mines Rd.
San Jose, CA 95120

Attn: Mr. Edward W. Pettit, Environmental Protection Manager, Western Group
P. O. Box 20957, San Jose, CA 95160

Waste Management, Inc.
801 Second Avenue, Suite 614
Seattle, WA 98104

Attn: Mr. Andrew M. Kenefick, Esq., Senior Legal Counsel, Western Group

**SUBJECT: Water Code Section 13267 Technical Report Requirement for Guadalupe
Landfill, 15999 Guadalupe Mines Rd., San Jose, Santa Clara County**

Dear Messrs. Pettit and Kenefick:

This letter requires Guadalupe Rubbish Disposal Company, Inc. and Waste Management, Inc. to submit a technical report on storm water management associated with inactive mercury mines located on property owned by the Guadalupe Rubbish Disposal Company, Inc. at 15999 Guadalupe Mines Rd., San Jose, Santa Clara County. This information will help Board staff to determine whether this site is in compliance with the NPDES General Permit requirements for storm water discharges associated with industrial activities (NPDES General Permit No. CAS000001).

BACKGROUND

Storm water discharges from inactive mercury mines located on Guadalupe Rubbish Disposal Company, Inc. property are subject to regulation under the Code of Federal Regulations, Title 40, Parts 122, 123, and 124. This Order is directed to the property owners, Guadalupe Rubbish Disposal Company, Inc., a wholly-owned subsidiary of Waste Management, Inc.

Water Board staff has received Waste Management's letter dated August 25, 2006 with the subject line *Guadalupe Landfill: Notice of Intent for General Permit*. In this letter Waste Management asserts that the inactive mercury mines located on their property are exempt from the NPDES General Permit requirements for storm water discharges associated with industrial activities because "discharged storm water does not come into contact with mining materials." While this General Permit does provide such an exemption, Item 4.b. on page vi of the fact sheet for the General Permit (<http://www.waterboards.ca.gov/stormwtr/docs/induspmnt.pdf>), states that, "To avoid liability, the facility operator should be certain that no discharge of storm water to surface waters will occur under any circumstance." This letter requires that you provide

documentation to support your statement that no discharge of storm water polluted by contact with mining waste on Guadalupe Rubbish Disposal Company, Inc. (Guadalupe Landfill) property occurs under any circumstance.

Water Board staff observed extensive piles of mercury mine waste and mine adits during a September 28 dry-season inspection of the Guadalupe Landfill property inactive mines. Guadalupe Landfill staff, Eddie Pettit, and consultant, Steve Janes, verbally described their past year's storm event observations to Carrie Austin, Water Board staff. They stated that storm water which contacted mining waste was either retained in the sedimentation basins or infiltrated and that they did not observe any discharge from the mining waste piles to the creek. Additionally they stated that several of the sedimentation basins date back to the mining era, and they were not able to provide descriptions of the infiltration basins' engineering design standards, maximum storm capacity, or infiltration capacity. Their verbal descriptions and the site inspection are insufficient evidence that no discharge of storm water polluted by mining waste occurs under any circumstance.

If you cannot fully document, to the satisfaction of the Executive Officer, that this site is exempt from the NPDES General Permit, then you are required to comply with the NPDES General Permit conditions. At a minimum, this will include:

- A storm water pollution prevention plan (SWPPP) for the inactive mine site(s), separate from the SWPPP for the landfill, in accordance with the General Permit Section A requirements; and,
- A monitoring program for the inactive mine area, separate from the monitoring program for the landfill, to include trace metals analysis for mercury collected with clean-hands protocols, including monitoring (water quality samples and visual observations) of the first major storm water runoff event each year, and three subsequent intense storms that are most likely to generate storm water runoff.

Inactive mines are also subject to regulation under California Code of Regulations, Title 27 Mining Waste Management Regulations, which begins at Section 22470 and the Mining and Reclamation Act of 1975. Applicability and associated requirements pertaining to these regulations for the Guadalupe Landfill property mines will be determined after review of the report required herein.

TECHNICAL REPORT REQUIREMENT

Therefore, you are required to submit a technical report containing the following information by March 31, 2007 on storm water management associated with inactive mercury mines:

1. A detailed description of the mine adits openings and distribution of mining waste on your property and the existing storm water conveyance and management system;
2. A detailed topographical map of the area containing the mine adits and mining waste [at a scale of no less than 1-inch to 100-feet and 25-foot contour intervals] which also illustrates the storm water management and conveyance system details;

February 1, 2007

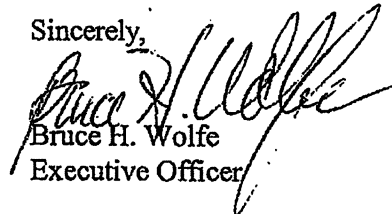
3. A description of the maximum storm event, and cumulative storm capacity, which the storm water conveyance system will contain such that there is no discharge to surface water (for example, a 25-year 24-hour storm event), including references, assumptions and calculations, and rainfall intensity of the 24-hour storm events with 10-year, 25-year, 100-year and 500-year recurrence intervals;
4. A plan and schedule for field verification of items 1-3, that includes the outline of the verification report and signature page for the certifying registered professional; and
5. A signature page for the technical report including the stamp, and dated signature, of an appropriate registered professional, certifying the accuracy of items 1-3.

CLOSING

This requirement for a report is made pursuant to Water Code Section 13267, which allows the Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. The attachment provides additional information about Section 13267 requirements. Any extension in the above deadline must be confirmed in writing by Water Board staff.

If you have any questions, please contact Carrie Austin of my staff at (510) 622-1015 [e-mail caustin@waterboards.ca.gov].

Sincerely,



Bruce H. Wolfe
Executive Officer

Attachment



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
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Arnold Schwarzenegger
Governor

Fact Sheet – Requirements For Submitting Technical Reports Under Section 13267 of the California Water Code

What does it mean when the regional water board requires a technical report?

Section 13267¹ of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

The requirement for a technical report is a tool the regional water board uses to investigate water quality issues or problems. The information provided can be used by the regional water board to clarify whether a given party has responsibility.

Are there limits to what the regional water board can ask for?

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The regional water board is required to explain the reasons for its request.

What if I can provide the information, but not by the date specified?

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

Are there penalties if I don't comply?

Depending on the situation, the regional water board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

Do I have to use a consultant or attorney to comply?

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

What if I disagree with the 13267 requirements and the regional water board staff will not change the requirement and/or date to comply?

You may ask that the regional water board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the regional water board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

If I have more questions, whom do I ask?

Requirements for technical reports indicate the name, telephone number, and email address of the regional water board staff contact.

¹ All code sections referenced herein can be found by going to www.leginfo.ca.gov.

EXHIBIT B



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Seattle, WA 98104
(206) 264-8207
(206) 264-8212 Fax

ANDREW M. KENEFICK

Senior Legal Counsel, Western Group
Admitted in Washington
Direct (206) 264-3062 Fax (866) 863-7961
akenefick@wm.com

February 23, 2007

VIA OVERNIGHT MAIL AND E-MAIL bwolfe@waterboards.ca.gov

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

FACILITY: 15999 Guadalupe Mines Road, San Jose, CA
(Guadalupe Rubbish Disposal Company)
WDID No. 243S007368

**RE: Request for Withdrawal of Water Code Section
13267 Technical Report Requirement**

Time Sensitive: Immediate Action Requested

Dear Mr. Wolfe:

On behalf of the Guadalupe Rubbish Disposal Company, Inc. ("GRDC"), I respectfully request that the California Regional Water Quality Control Board, San Francisco Bay Region (the "Board" or "RWQCB") withdraw its Technical Report Requirements presented in the Board's February 1, 2007 letter issued pursuant to California Water Code § 13267 (the "Letter"). A copy is attached as **Exhibit 1**. The Letter seeks information – indeed potentially very burdensome information to develop and prepare – concerning the management of stormwater on portions of the Guadalupe Landfill property where historic mining operations occurred.

GRDC has previously provided the RWQCB with information concerning past mining by prior landowners at the property, as well as storm water control measures and monitoring. Those submissions are still pending review by RWQCB staff. GRDC believes the information submitted adequately addresses the information requirements of the Board. Furthermore, the Letter appears to be based on a misunderstanding of GRDC's position with respect to managing stormwater throughout the landfill property, including the areas of historic mining activity. The Letter wrongly assumes that GRDC seeks to exempt the historic mining areas of the Landfill property from coverage under the *General Permit for Discharges of Storm Water Associated with Industrial Activities* (the "General Permit"). On the contrary, GRDC's Notice of Intent, Storm Water Pollution Prevention Plan ("SWPPP"), and Storm Water Monitoring Plan ("SWMP") cover the entire Landfill

February 23, 2007

property, including the areas of inactive mining operations. We are not seeking an exemption from the General Permit.

Consequently, and for the reasons set forth in more detail below, GRDC requests the withdrawal of the Section 13267 Letter. Instead, GRDC requests that the RWQCB review the information submitted and respond in writing to GRDC with any requests for additional information or recommended action items before issuing a Section 13267 letter.

OVERVIEW OF SITE HISTORY

To place this issue in context, the Landfill property is approximately 411 acres of the Capitancillos Range of hills, approximately 11 miles South of San Jose. Approximately 115 acres of land are used by GRDC as a municipal landfill in the northern portion of the site that is separated from the southern portion of the site by a topographic ridgeline. The South side of the property is a sloped area, extending down to Guadalupe Creek. A relatively small section of this slope was once known as the Guadalupe Mine. The mine first began operations in or about 1846. The vast majority of mining operations (measured by ore extracted) occurred from approximately 1851 to 1875. Other spikes in mining activity occurred during World Wars I and II. Relatively *de minimis* levels of prospecting and reworking of already-mined ores reportedly continued sporadically into the early 1970s.

What distinguishes the Guadalupe Mine from virtually all other mines in this area is the concrete flume built into Guadalupe Creek. In 1873, the mine operators began construction of a "watertight flume" to prevent water from migrating down into the underground mine shafts that were below the creek elevation. The flume is about 500 feet long with an average width of about 25 feet and an average height of about 15 feet. It literally lines the creek adjacent to the area where the most active mining reportedly occurred.

Although the flume was built to prevent water from passing from the creek into the mining areas, it does double duty by preventing stormwater from the mining areas from entering Guadalupe Creek. We are not aware that Guadalupe Creek has ever overflowed the height of the flume walls. Now, with the construction of dams and other upgradient controls overseen by the Santa Clara Valley Water District, it is substantially certain that no future storm events would ever result in water overflowing the flume walls.

RESPONSE TO SECTION 13267 REQUEST

A. The Letter Wrongly Assumes that GRDC Claims an Exemption from the General Permit Requirements.

The Section 13267 Letter appears to be based on a misunderstanding of GRDC's position with respect to managing stormwater throughout the landfill property, including the areas of historic mining activity. Specifically, your letter states,

If you cannot fully document, to the satisfaction of the Executive Officer, that this site is exempt from the NPDES General Permit, then you are required to comply with the NPDES General Permit conditions.

GRDC is not claiming to be exempt from the NPDES General Permit. We agree that the entire Landfill property – including the inactive mining area – is subject to the General Permit, as recognized by the NOI and as explained in my August 25, 2006 letter (**Exhibit 2**). Furthermore, GRDC's existing SWPPP and SWMP already address stormwater management in the inactive mining area. Indeed, the current substantive requirements of the General Permit for GRDC's landfill are more stringent than the requirements applicable to inactive mining operations. As I explained in my August 25, 2006 letter,

Even if the NOI should have listed inactive mining operations as you contend, there would be no requirement to file a separate NOI for those activities and there are no additional substantive requirements under the current General Permit (No. 97-03-DWQ). Indeed, the General Permit would allow for relaxation of certain requirements for inactive mining sites. [See, e.g., General Permit § B.11] Thus, it would seem to be a moot question as to whether the NOI should or should not include reference to inactive mining operations.

In other words, we understand the purpose of the Letter is to require GRDC to provide sufficient evidence to support an exemption from the General Permit requirements for the inactive mining operations. Yet, GRDC does not seek such an exemption and agrees that the General Permit covers the entire GRDC property, including the current landfilling operations and historic mining areas. We hope that this clarification in and of itself renders unnecessary the Section 13267 Letter and that the RWQCB can withdraw it.

B. GRDC's Stormwater Pollution Prevention Plan Adequately Addresses Monitoring

It appears that the only remaining issue is whether there are stormwater discharges occurring from the inactive mining areas. As in trying to prove any negative assertion, all we can claim is that we monitor for stormwater in the inactive mining areas during storm events but have not identified any stormwater discharges to Guadalupe Creek. GRDC will continue to monitor for such discharges and is more than willing to work with Water Board staff to improve its SWMP in order to confirm that no such discharges are occurring. We have also invited Water Board staff to inspect the inactive mining areas during storm events to confirm our observations.

The existing SWPPP and SWMP establish stormwater management and monitoring for the entire 411-acre Landfill property and adequately address potential contamination that could reasonably emanate from the historic mining area. *First*, the southern slope of the hill where mining used to occur has been graded and or revegetated such that stormwater runoff is not discharging to Guadalupe Creek. Runoff controls are in place along all roads with drainage channels. All runoff is directed to one of three sediment basins, resulting in no known or foreseeable discharges to Guadalupe Creek. *Second*, the SWMP requires sampling for metals, including but not limited to mercury, at three locations around the property.

There is only one known discharge location in the former mining area. That discharge point, SW3, is sampled for metals, including mercury. The monitoring results from SW3, as well as all other points, are submitted to the RWQCB both in GRDC's Annual Report for the General Permit and semi-annual groundwater monitoring reports.

A draft of GRDC's SWPPP was submitted to RWQCB staff on August 31, 2006.¹ The transmittal memo for this submission invited the RWQCB to contact GRDC if it had any questions about the SWPPP. See **Exhibit 3**. RWQCB Staff has not raised any specific questions or concerns about the SWPPP.

On September 18, 2006, GRDC performed an annual inspection, as required by the General Permit. Based on that inspection, GRDC decided to make further refinements to its SWPPP. GRDC notified RWQCB Staff on October 20, 2006 that GRDC would make these revisions to the SWPPP within 90 days of the annual inspection, as required by applicable law. A copy of GRDC's communications on this point is attached as **Exhibit 4**. Of note, the October 20 transmittal invites RWQCB staff to comment on the SWPPP: "With the [SWPPP] document in a state of revision, we welcome any comments you have based on your review of the last revision of the SWPPP and observations you made during our recent meeting." On October 20, 2006, RWQCB Staff acknowledged receipt of the Draft SWPPP and advised GRDC that the RWQCB would be responding to the SWPPP "in writing." See **Exhibit 5**. GRDC responded by again by inviting comments to the SWPPP: "Please feel free to add comments to the SWPPP." See **Exhibit 6**.

Other than the issuance of the Section 13267 Letter, the RWQCB has not formally responded to or commented upon the submission of GRDC's SWPPP. GRDC strongly believes it has acted in good faith in: (1) addressing this issue through its August 2006 Draft SWPPP; (2) self-policing and proactively updating its SWPPP; and (3) repeatedly asking RWQCB to make substantive comments to the SWPPP if they feel it was lacking in any way. Based on GRDC's attempts to communicate with your staff, it would be more appropriate for Board Staff and GRDC to meet and confer on any differing views prior to taking this more aggressive step of issuing a Section 13267 Technical Report Requirement.

C. GRDC Has Previously Submitted Much of the Information Requested.

GRDC is also troubled by the Section 13267 request because it requests much of the same information that GRDC has previously submitted to the Water Board, without any indication that the previous submittals were not responsive or adequate. For example, the Letter requests "[a] detailed description of the mine adits [and] openings and distribution of mining waste on your property" Letter at 2. In responding to this point, GRDC notes that the area at issue has not been mined in over 30 years in any capacity and that no significant mining activities (in terms of volume) have taken place on the site since approximately World War II. The mining activities that occurred subsequent to World War II tended to involve the "reworking" of previously mined ores. More significantly, GRDC is not a mining company, never, mined this site and none of its employees has any direct knowledge of mining activities at the property. Consequently, whatever GRDC has been able to learn about the past mining operations is based on historical documents.

Nonetheless, GRDC has – at considerable expense – already provided much historical information to the Water Board. On September 7, 2005, GRDC sent RWQCB a letter responding to a similar request for information about historic mining activities at the property. That letter, a copy of which is attached as **Exhibit 7** also transmitted an 1874 map and a 1947 map specifically

¹ A copy of the SWPPP was also hand-delivered to RWQCB staff during a site visit on September 28, 2006.

referencing former mine openings and locations of mining activities. GRDC has also given RWQCB staff a tour of the former mining area so that they could see these areas for themselves. Candidly, GRDC does not know how else to respond to this Technical Report Requirement.

D. Other Technical Report Requirements Do Not Bear a Reasonable Relationship to the Need for the Report

As you know, the standard of review for a Section 13267 request is whether the burdens imposed by the requirements in the order bear a reasonable relationship to the need for the information and the benefits to be obtained. See, e.g., *In the Matter of the Petition of Pacific Lumber company and Scotia Pacific Company LLC for Review of Monitoring and Reporting Order No. R1-2001 Issued by the CRWQCB, North Coast Region*. 2001 Cal. ENV LEXIS 15 (2001) at 17. GRDC respectfully submits that the burdens imposed by the Section 13267 requirements are excessive and unreasonable in light of GRDC's existing SWPPP and SWMP that have been submitted to but have not been commented on by RWQCB yet, as well as the September 2005 information cited above.

Specifically, there does not appear to be any need to create a more detailed topographical map illustrating storm water management and conveyance system details or a more detailed storm water conveyance and management system than what has already been addressed in the SWPPP. If staff has concerns about the adequacy of the SWPPP, GRDC again invites staff to meet with them and comment on the SWPPP and SWMP.

On this last point, GRDC staff and or their retained consultants periodically inspect the banks of Guadalupe Creek for signs of stormwater discharges. These inspections include but are not limited to walking the banks of Guadalupe Creek that border the former mining area during storm events. GRDC remains confident that storm water from former mining areas is not reaching Guadalupe Creek. However, GRDC recognizes that Staff may question this finding and consequently invites RWQCB staff to discuss this conclusion in more detail, prior to issuing demands under Water Code Section 13267.

Similarly, it is unduly burdensome and unreasonable to demand engineering and other hydrological studies to address a 24-hour storm event with a 10-year, 25-year, 100-year and 500-year recurrence intervals when in fact there has been no preliminary discussion about the adequacy of the SWPPP, SWMP and the BMPs that are currently in place.

GRDC prides itself in being a good corporate citizen with both a track record and a desire for working productively with its regulators. For example, when the federal and state trustees began their natural resource damage assessment based on historic mining contamination in the Guadalupe watershed, GRDC (even though it had never mined the site) stepped forward and cooperated with the natural resource trustees in reaching a settlement that provided substantial in-stream restoration benefits throughout the watershed. GRDC has also been an active participant in the local (Guadalupe) Watershed Management Initiative and has responded to requests to comment on the pending mercury TMDL for the Guadalupe River Watershed.

February 23, 2007

Moreover, GRDC periodically reviews and upgrades its SWPPP and SWMP. The most recent example of this is a December 2006 revision (attached as **Exhibit 8**) based in part upon the results of a September 28, 2006 site inspection.

CONCLUSION

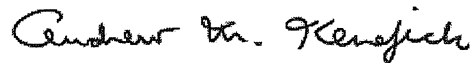
In short, the Section 13267 request is unnecessary because: (1) its stated purpose is to determine whether the General Permit applies to the inactive mining areas of the Landfill property, (2) GRDC agrees that the General Permit, the SWPPP, and the SWMP apply to the entire property, including the inactive mining area; (3) the General Permit requirements are the same, regardless of whether inactive mining operations are exempt or not; and (4) GRDC continues to be willing to work with the Board's staff to improve the SWPPP and SWMP for the entire property, including the areas of historic mining operations.

GRDC remains open to any comment that the Water Board has with respect to the SWPPP and SWMP. If the Water Board staff believes that additional monitoring measures are appropriate for the inactive mining areas, GRDC is very willing to discuss those suggestions and, if appropriate, incorporate them into our overall stormwater management program. We are confident that open and cooperative discussion of specific concerns or suggestions will resolve most, if not all, of the concerns addressed in or underlying your Letter.

We request that we hear back from the Board with a decision on rescinding the Section 13267 order no later than **February 27, 2007**. We reluctantly are requesting this admittedly short deadline only because GRDC has 30 days to appeal the Letter to the State Water Resources Control Board, and we will need time to prepare the appeal if we cannot resolve this matter at the local level by then.

We look forward to working with you to reach a mutually acceptable resolution.

Sincerely,



Andrew M. Kenefick

Exhibits (8)

cc: Carrie Austin
Edward Pettit
Todd Maid – Reed Smith

LL to B. Wolfe re GRDC Stormwater (2/23/07)



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

RECEIVED

FEB 8 2007

WM WESTERN GROUP
LEGAL OFFICE

Date: February 1, 2007
WDID No: 243SQ07368

Guadalupe Rubbish Disposal Company, Inc.
15999 Guadalupe Mines Rd.
San Jose, CA 95120

Attn: Mr. Edward W. Pettit, Environmental Protection Manager, Western Group
P. O. Box 20957, San Jose, CA 95160

Waste Management, Inc.
801 Second Avenue, Suite 614
Seattle, WA 98104

Attn: Mr. Andrew M. Kenefick, Esq., Senior Legal Counsel, Western Group

**SUBJECT: Water Code Section 13267 Technical Report Requirement for Guadalupe
Landfill, 15999 Guadalupe Mines Rd., San Jose, Santa Clara County**

Dear Messrs. Pettit and Kenefick:

This letter requires Guadalupe Rubbish Disposal Company, Inc. and Waste Management, Inc. to submit a technical report on storm water management associated with inactive mercury mines located on property owned by the Guadalupe Rubbish Disposal Company, Inc. at 15999 Guadalupe Mines Rd., San Jose, Santa Clara County. This information will help Board staff to determine whether this site is in compliance with the NPDES General Permit requirements for storm water discharges associated with industrial activities (NPDES General Permit No. CAS000001).

BACKGROUND

Storm water discharges from inactive mercury mines located on Guadalupe Rubbish Disposal Company, Inc. property are subject to regulation under the Code of Federal Regulations, Title 40, Parts 122, 123, and 124. This Order is directed to the property owners, Guadalupe Rubbish Disposal Company, Inc., a wholly-owned subsidiary of Waste Management, Inc.

Water Board staff has received Waste Management's letter dated August 25, 2006 with the subject line *Guadalupe Landfill: Notice of Intent for General Permit*. In this letter Waste Management asserts that the inactive mercury mines located on their property are exempt from the NPDES General Permit requirements for storm water discharges associated with industrial activities because "discharged storm water does not come into contact with mining materials." While this General Permit does provide such an exemption, Item 4.b. on page vi of the fact sheet for the General Permit (<http://www.waterboards.ca.gov/stormwtr/docs/induspmnt.pdf>), states that, "To avoid liability, the facility operator should be certain that no discharge of storm water to surface waters will occur under any circumstance." This letter requires that you provide

documentation to support your statement that no discharge of storm water polluted by contact with mining waste on Guadalupe Rubbish Disposal Company, Inc. (Guadalupe Landfill) property occurs under any circumstance.

Water Board staff observed extensive piles of mercury mine waste and mine adits during a September 28 dry-season inspection of the Guadalupe Landfill property inactive mines. Guadalupe Landfill staff, Eddie Pettit, and consultant, Steve Janes, verbally described their past year's storm event observations to Carrie Austin, Water Board staff. They stated that storm water which contacted mining waste was either retained in the sedimentation basins or infiltrated and that they did not observe any discharge from the mining waste piles to the creek. Additionally they stated that several of the sedimentation basins date back to the mining era, and they were not able to provide descriptions of the infiltration basins' engineering design standards, maximum storm capacity, or infiltration capacity. Their verbal descriptions and the site inspection are insufficient evidence that no discharge of storm water polluted by mining waste occurs under any circumstance.

If you cannot fully document, to the satisfaction of the Executive Officer, that this site is exempt from the NPDES General Permit, then you are required to comply with the NPDES General Permit conditions. At a minimum, this will include:

- A storm water pollution prevention plan (SWPPP) for the inactive mine site(s), separate from the SWPPP for the landfill, in accordance with the General Permit Section A requirements; and,
- A monitoring program for the inactive mine area, separate from the monitoring program for the landfill, to include trace metals analysis for mercury collected with clean-hands protocols, including monitoring (water quality samples and visual observations) of the first major storm water runoff event each year, and three subsequent intense storms that are most likely to generate storm water runoff.

Inactive mines are also subject to regulation under California Code of Regulations, Title 27 Mining Waste Management Regulations, which begins at Section 22470 and the Mining and Reclamation Act of 1975. Applicability and associated requirements pertaining to these regulations for the Guadalupe Landfill property mines will be determined after review of the report required herein.

TECHNICAL REPORT REQUIREMENT

Therefore, you are required to submit a technical report containing the following information by March 31, 2007 on storm water management associated with inactive mercury mines:

1. A detailed description of the mine adits openings and distribution of mining waste on your property and the existing storm water conveyance and management system;
2. A detailed topographical map of the area containing the mine adits and mining waste [at a scale of no less than 1-inch to 100-feet and 25-foot contour intervals] which also illustrates the storm water management and conveyance system details;

February 1, 2007

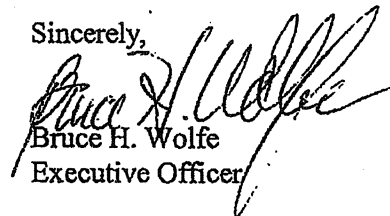
3. A description of the maximum storm event, and cumulative storm capacity, which the storm water conveyance system will contain such that there is no discharge to surface water (for example, a 25-year 24-hour storm event), including references, assumptions and calculations, and rainfall intensity of the 24-hour storm events with 10-year, 25-year, 100-year and 500-year recurrence intervals;
4. A plan and schedule for field verification of items 1-3, that includes the outline of the verification report and signature page for the certifying registered professional; and
5. A signature page for the technical report including the stamp, and dated signature, of an appropriate registered professional, certifying the accuracy of items 1-3.

CLOSING

This requirement for a report is made pursuant to Water Code Section 13267, which allows the Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. The attachment provides additional information about Section 13267 requirements. Any extension in the above deadline must be confirmed in writing by Water Board staff.

If you have any questions, please contact Carrie Austin of my staff at (510) 622-1015 [e-mail caustin@waterboards.ca.gov].

Sincerely,



Bruce H. Wolfe
Executive Officer

Attachment



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold Schwarzenegger
Governor

Fact Sheet – Requirements For Submitting Technical Reports Under Section 13267 of the California Water Code

What does it mean when the regional water board requires a technical report?

Section 13267¹ of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

The requirement for a technical report is a tool the regional water board uses to investigate water quality issues or problems. The information provided can be used by the regional water board to clarify whether a given party has responsibility.

Are there limits to what the regional water board can ask for?

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The regional water board is required to explain the reasons for its request.

What if I can provide the information, but not by the date specified?

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

Are there penalties if I don't comply?

Depending on the situation, the regional water board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

Do I have to use a consultant or attorney to comply?

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

What if I disagree with the 13267 requirements and the regional water board staff will not change the requirement and/or date to comply?

You may ask that the regional water board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the regional water board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

If I have more questions, whom do I ask?

Requirements for technical reports indicate the name, telephone number, and email address of the regional water board staff contact.

Revised August 2005

¹ All code sections referenced herein can be found by going to www.leginfo.ca.gov.



801 Second Avenue, Suite 614
Seattle, WA 98104
(206) 264-8207
(206) 264-8212 Fax

ANDREW M. KENEFICK

Senior Legal Counsel, Western Group
Admitted in Washington
Direct (206) 264-3062 Fax (866) 863-7961
akenefick@wm.com

August 25, 2006

BY U.S. MAIL

Carrie M. Austin, P.E., Project Manager
San Francisco Bay Regional Water Quality Control Board
1515 Clay St., Suite 1400
Oakland, CA 94612

RE: Guadalupe Landfill: Notice of Intent for General Permit

Dear Ms. Austin:

During our meeting with you in July discussing the development of the Total Maximum Daily Load for the Guadalupe Watershed, you asked whether Guadalupe Rubbish Disposal Company, Inc. ("GRDC") is properly covered by the General Permit to Discharge Storm Water Associated with Industrial Facilities (the "General Permit"). The answer is yes. GRDC previously filed a Notice of Intent for coverage under the General Permit. A copy is attached. The NOI specifically identified the parcels covered: Nos. 575-04-006, 575-03-012 and 575-03-011. Parcel No. 575-04-006 includes the south-southwest portion of the landfill property where some historic mining activity apparently occurred. I have included a copy of map depicting this parcel.

You suggested that the NOI may not include the areas with historic mining activities since the NOI does not include inactive or abandoned mining as a listed industrial activity. First, as we have discussed previously, discharges not subject to the General Permit include mining activities where discharged storm water does not come into contact with mining materials. Second, the NOI requires GRDC to identify the SIC code that "best identifies" the industrial activity that is taking place at the facility. The appropriate SIC for solid waste landfilling is 4953. Even if the NOI should have listed inactive mining operations as you contend, there would be no requirement to file a separate NOI for those activities and there are no additional substantive requirements under the current General Permit (No. 97-03-DWQ). Indeed, the General Permit would allow for relaxation of certain requirements for inactive mining sites. Thus, it would seem to be a moot question as to whether the NOI should or should not include reference to inactive mining operations.

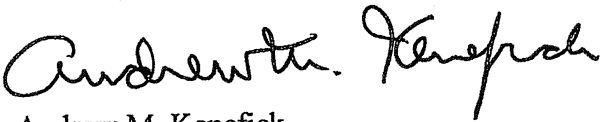
Finally, as we discussed, GRDC will be shortly submitting to you a revised Stormwater Pollution Prevention Plan ("SWPPP") that updates and improves the landfill's existing SWPPP, including its coverage of the south-southwest areas of the Landfill property.

EXHIBIT 2

August 25, 2006

I hope that this letter addresses the issue you raised. If it does not, please let me know.

Sincerely,


Andrew M. Kenefick

cc: Eddie Pettit
Todd Maiden
LL re Guadalupe LF NOI (8/25/06)

NOTICE OF INTENT

FOR GENERAL PERMIT TO DISCHARGE STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITY IN SANTA CLARA COUNTY TO SOUTH SAN FRANCISCO BAY OR ITS TRIBUTARIES
San Francisco Bay Regional Water Quality Control Board Order No. 92-011



MARK ONLY
 ONE ITEM

1. ☒ Existing Facility
 2. ☐ New Facility

3. ☐ Change of Information
 WDD # _____

OWNER/OPERATOR

Name: <u>Guadalupe Rubbish Disposal Co., Inc.</u>		A. Owner/Operator Type: (Check one)	
Mailing Address: <u>P.O. Box 20957</u>		1. <input type="checkbox"/> City 2. <input type="checkbox"/> County 3. <input type="checkbox"/> State 4. <input type="checkbox"/> Federal	
City: <u>San Jose</u>		5. <input type="checkbox"/> Special District 6. <input type="checkbox"/> Government Combo 7. <input checked="" type="checkbox"/> Private	
Contact Person: <u>James H. Lord</u>		State: <u>CA</u> Zip: <u>95160</u> Phone: <u>(408) 268.1670</u>	
		B. 1. <input type="checkbox"/> Owner 2. <input type="checkbox"/> Operator 3. <input checked="" type="checkbox"/> Owner/Operator	

FACILITY/SITE INFORMATION

Facility Name: <u>Guadalupe Rubbish Disposal Co., Inc.</u>		County: <u>Santa Clara</u>	
Street Address: <u>15999 Guadalupe Mines Road</u>		Contact Person: <u>James H. Lord</u>	
City: <u>San Jose</u>		State: <u>CA</u> Zip: <u>95120</u> Phone: <u>(408) 268 - 1670</u>	
Parcel Number(s) (If more than 4 apply to facility, enter additional numbers in SECTION IX. A):			
A. <u>575-04-006</u> B. <u>575-03-012</u> C. <u>575-03-011</u> D. _____			

II. BILLING ADDRESS

Send Billing Statements To: A. ☒ Owner/Operator B. ☐ Facility C. ☐ Other (Specify in SECTION IX. B)

V. RECEIVING WATER INFORMATION

1. Does your facility's storm water discharge directly to: (Check one)

1. ☐ Storm drain system

Owner of storm drain system: (Name) _____

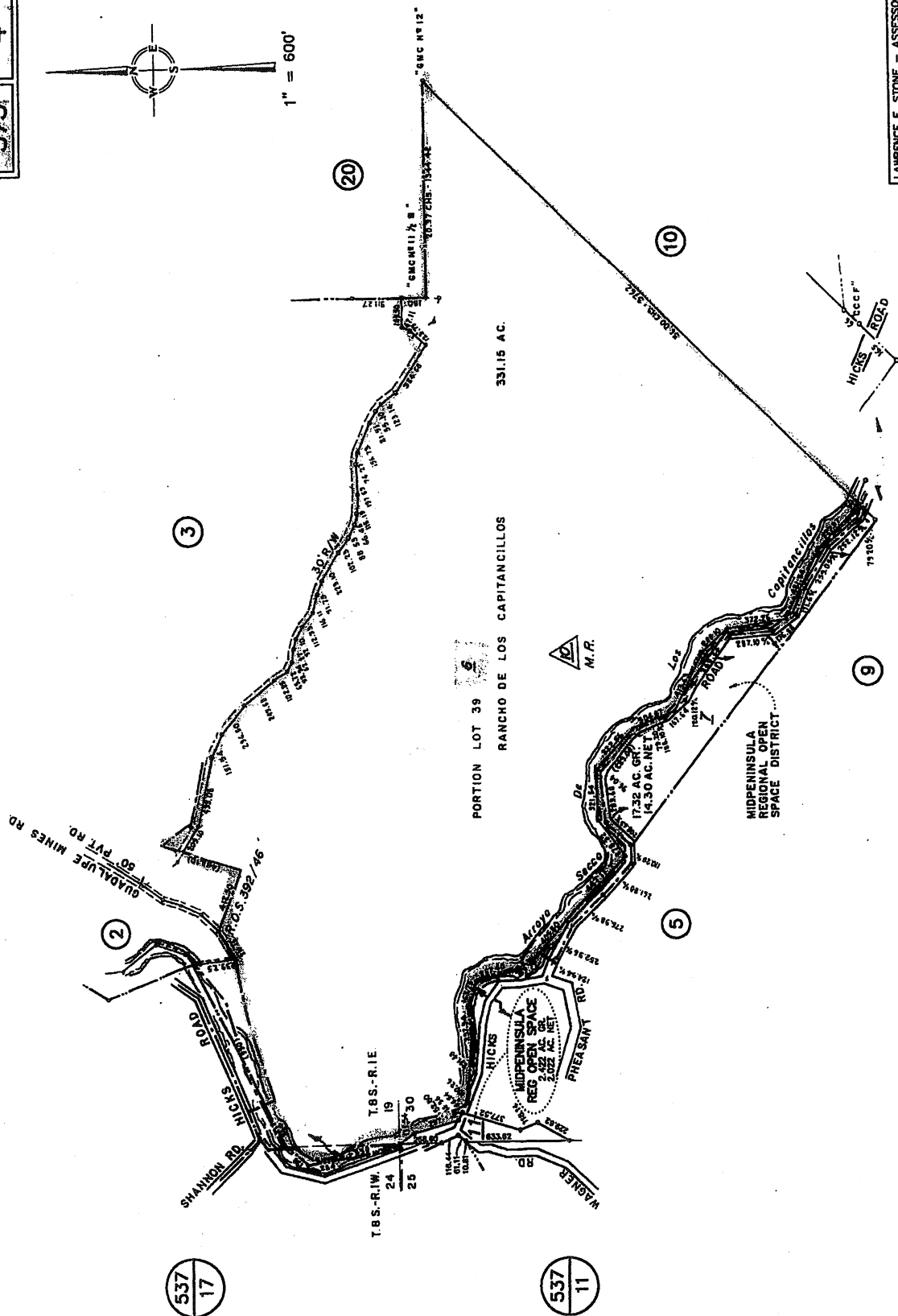
2. ☐ Directly to waters of U.S. (e.g., river, lake, creek, ocean)
 3. ☒ Indirectly to waters of U.S.

3. Name of closest receiving water:

Guadalupe Creek

V. INDUSTRIAL INFORMATION

A. SIC Code(s):		B. Type of Business:	
1. <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 2. <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 3. <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 4. <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		<u>Landfill/Recycling Facility</u>	
Industrial activities at facility: (Check all that apply)			
1. <input type="checkbox"/> Manufacturing 2. <input type="checkbox"/> Vehicle Maintenance 3. <input type="checkbox"/> Hazardous Waste Treatment, Storage, or Disposal Facility (RCRA Subtitle C)			
4. <input type="checkbox"/> Material Storage 5. <input type="checkbox"/> Vehicle Storage 6. <input type="checkbox"/> Material Handling 7. <input type="checkbox"/> Wastewater Treatment			
8. <input type="checkbox"/> Power Generation 9. <input checked="" type="checkbox"/> Recycling 10. <input checked="" type="checkbox"/> Landfill 11. <input type="checkbox"/> Other: _____			



LAWRENCE E. STONE — ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2008-2007

From: Pettit, Eddie [EPettit@wm.com]
Sent: Thursday, August 31, 2006 7:38 PM
To: Carrie Austin
Cc: Kenefick, Andrew M; Bowen, Brian; Maiden, Todd O.; stevejanes@sbcglobal.net; Morse, Joe
Subject: Draft SWPPP and monitoring plan
Attachments: grdc swppp draft final 2006.pdf; grdc swppp mon plan draft final 2006.pdf

Carrie,

Per your request, please find attached, the draft SWPPP and Stormwater monitoring plan for the Guadalupe Rubbish Disposal Company. Please call me to confirm receipt of this email. A hard copy of these documents will be mailed.

Please feel free to call me at the number below, if you have any questions.

Thanks,

Edward W. Pettit
Environmental Protection Manager
408-640-6700

<<grdc swppp draft final 2006.pdf>> <<grdc swppp mon plan draft final 2006.pdf>>

>>> "Pettit, Eddie" <EPettit@wm.com> 10/20/2006 4:37 PM >>>

Carrie,

As you know, the Guadalupe Rubbish Disposal Company (GRDC) SWPPP is a living document and subject to constant upgrade and improvement depending on site conditions and observations. The State Water Board recognizes this fact and is stated in the General Permit. The Permit states that the SWPPP and monitoring program requirements include various inspections, reviews and observations all of which recognize, encourage and mandate an interactive self evaluation process that is necessary to consistently comply with the General Permit. In line with this requirement, GRDC staff performed a comprehensive annual inspection on September 18, 2006 (well within the 8-16 month period since the previous evaluations as required in the General Permit) to prepare for the storm season. Observations and recommendations stated in this inspection report as well as dry season observations will be incorporated into the GRDC SWPPP within 90 days of the evaluation (as mandated in the General Permit). The revised SWPPP will identify additional potential pollutants (if any) and additional BMP's that will be implemented to prevent or reduce any pollutants which may effect water quality. With the document in a state of revision, we welcome any comments you have based on your review of the last revision of the SWPPP and observations you made during our recent meeting. Once the GRDC SWPPP has been revised, we will send you the latest version of the document.

Please feel free to call me at 408-640-6700, if you have any questions.

Edward W. Pettit
Environmental Protection Manager, West Group
Waste Management, Inc.
408-640-6700

Waste Management's renewable energy projects create enough energy to power over 1 million homes

-----Original Message-----

From: Carrie Austin [mailto:CAustin@waterboards.ca.gov]
Sent: Friday, October 20, 2006 5:15 PM
To: Pettit, Eddie
Cc: Bowen, Brian; Morse, Joe
Subject: Re: Guadalupe SWPPP

Eddie - this e-mail is to confirm my understanding that the August 2006 revised SWPPP copy you provided me on September 28 is a draft. As I informed Andrew Kennefick (copy below), the Water Board will be responding to this document in writing.

>>> Carrie Austin 10/19/2006 9:27 AM >>>
Andrew - we will be responding in writing.

Eddie - I haven't yet received a (signed) signature page for the 2006 updated SWPPP.

Carrie M. Austin, P.E.

Project Manager - Hg TMDL in Guadalupe
SFB Water Board
1515 Clay St., # 1400
Oakland, CA 94612
caustin@waterboards.ca.gov
(510) 622-1015
fax 622-2460

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Please feel free to call me at 408-640-6700, if you have any questions.

EXHIBIT 5

Edward W. Pettit
Environmental Protection Manager, West Group
Waste Management, Inc.
408-640-6700

Waste Management's renewable energy projects create enough energy to power
over 1 million homes

-----Original Message-----

From: Pettit, Eddie
Sent: Monday, October 23, 2006 5:05 PM
To: 'Carrie Austin'
Subject: RE: Guadalupe SWPPP

Carrie,

Please feel free to add comments to the SWPPP.

Thanks,

Edward W. Pettit
Environmental Protection Manager, West Group
Waste Management, Inc.
408-640-6700
Waste Management's renewable energy projects create enough energy to power
over 1 million homes

-----Original Message-----

From: Carrie Austin [<mailto:CAustin@waterboards.ca.gov>]
Sent: Friday, October 20, 2006 5:15 PM
To: Pettit, Eddie
Cc: Bowen, Brian; Morse, Joe
Subject: Re: Guadalupe SWPPP

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Carrie M. Austin, P.E.

Project Manager - Hg TMDL in Guadalupe
SFB Water Board
1515 Clay St., # 1400
Oakland, CA 94612
caustin@waterboards.ca.gov
(510) 622-1015
fax 622-2460

>>> "Pettit, Eddie" <EPettit@wm.com> 10/20/2006 4:37 PM >>>

Carrie,



**GUADALUPE RUBBISH
DISPOSAL CO., INC.**

P.O. Box 20957
San Jose, CA 95160
(408) 268-1670
(408) 268-7451 Fax

September 7, 2005

Ms. Carrie Austin
Project Manager – Guadalupe Mercury TMDL
California Regional Water Quality Control Board,
San Francisco Bay Region
1515 Clay Street
Oakland, CA 94612

Re: Guadalupe Rubbish Disposal Company

Dear Carrie:

In response to your request for historical information about the former Guadalupe Mine (the "Mine") as well as all documents in the possession of the Guadalupe Rubbish Disposal Company ("GRDC") that identify the possible locations of mining waste on land now owned by GRDC, we have spent considerable time reviewing certain publicly available documents from among other sources, the U.S. Bureau of Mines, the California State Mining Bureau and the Bancroft and Stanford University Libraries. With this as background, we are able to provide you with the following general information about past activities at the Mine.

Historical Mining Operations

The first known evidence of a "Guadalupe Mine" appears to occur in 1846 (based on papers filed by a Josiah Belden). In 1847, there was some evidence that four or five individuals may have done some prospecting or minimal mining on the property. This likely occurred South of Guadalupe Creek.

The Mine appears to have operated as an ongoing commercial venture by the Santa Clara Mining Association from approximately 1851 to 1875. During this time period, it appears the vast majority of the ore mined at the site came from South of Guadalupe Creek.

It was not until 1873 that the Mine could be worked year round. Prior to that time, water from Guadalupe Creek would filter through the ground and fill up the lower workings of the Mine (except in summer when the water levels were low enough to allow pumping to keep water out of the lower portions of the Mine).

In 1873, the Mine operator began to build a "water-tight flume" to prevent water infiltration into the Mine. The original flume was approximately 500 feet long and had an average width of about 25 feet and an average height of about 15 feet. On information and belief, the flume never overflowed.

EXHIBIT 7

In or about 1874, a new shaft was sunk on the North side of the Creek. From 1875 through some time in 1884, the Mine was operated by the Guadalupe Mining Company ("GMC"). Sometime between 1875 and 1884, GMC made improvements to the Mine, including a newer, higher efficiency reduction plant. Also, from 1875 to 1877, GMC constructed what they described as a "water tight channel" to prevent the Mine shaft located on the South side of the creek from flooding. ¹ This allowed mining to continue without water infiltrating the Mine. GRDC believes the flume would have also minimized the amount cinnabar or other mercury-laden sediments from being lost into the creek, since the flume was built through the very areas where mining was occurring.

The Mine was in receivership from approximately 1881 to 1885 and remained essentially idle from about 1886 to 1900 due to unspecified litigation.

In or about 1900, H.C. Davey organized the Century Mining Company to operate the Mine. Century remodeled the reduction plant, started to dewater the mine shafts that had again filled with water over 19 years of no use and began to pass through the furnace a great amount of the old dumps and some fillings of the upper parts of the old workings. The only maps we have which depict the location of possible mining locations are attached. This "recycling" of previously used ore bodies would have reduced if not eliminated any substantial amount of mercury from leaching out of old calcines and tailings.

At the time of Century's operations (approximately 1901 to 1904), the Mine reportedly used two 20-ton coarse ore furnaces and two 40-ton fine ore furnaces. This type of equipment would have been superior to the smaller and less efficient "retorts" at other mines that could have resulted in mercury being left in calcine piles. There is some indication that the Mine dump was "reworked" in 1901, although we have no description as to where this area was located. In 1904 Century Mining Company shut down the Mine for an unspecified amount of time.

The Davey Mining Investment Company briefly operated the Mine from approximately 1905 to 1906. It appears that the reference to "Davey" in this entity may be the H.C. Davey who organized the Century Mining Company.

The Guadalupe Mining Company began operating the Mine sometime between 1906 and 1909. We do not know if there is any relationship between this company and the entity of similar name that purchased the Mine in approximately 1875.

There are indications that capital improvements were made to the Mine in 1911 and 1915, but it is unclear what those specific improvements were.

The New Guadalupe Mining Company operated the Mine from approximately 1906 or 1910 to either 1920 or 1922.² During this time period, several significant events occurred which would have reduced the likelihood that mercury would have been released to Guadalupe Creek.

First, in or about 1917, more work was being performed on the flume to extend it to approximately 740' long with a floor up to 55' wide and side walls up to 9' high. Similar to the original flume, this work was done to eliminate surface infiltration of water to the mine and allow

¹ It is unclear but appears this may simply be a continuation or expansion of the 1873 "water-tight flume" referenced above.

² It may be possible that the entity that "Guadalupe Mining Company" operated the Mine from 1906 to 1909 may have actually been the "New" Guadalupe Mining Company.

continued mining South of the creek. The new concrete channel was located directly over former mining areas adjacent to the creek. This capping of the creek and the adjacent walls of the channel would have reduced erosion along that portion of the creek and further reduced sediment and surface water runoff into the creek from many calcine piles. Second, the mining operations during this time period were focused on reworking old calcine piles and workings, thus "recycling" material in a way that would have minimized releases into the creek as well as prevented future releases from occurring.

With the advent of World War I, mining operations increased. As of 1917, the reduction plant consisted of 2 coarse ore furnaces with capacities of 18 tons per day each and two fine ore furnaces of 30 tons per day each. Old material from the Mine dumps was processed in these furnaces, further reducing any mercury mass that would otherwise have escaped into the creek.

To the extent that new ore was mined during this time period, it was mined in a way that would have minimized releases of mercury laden sediment into the creek. For example, the ore was broken into cobble size pieces and sorted by hand while still inside the mine. The waste from this process was used to fill old stopes underground. As a result, most of this waste never reached the surface.

At the surface, the cobble sized ore was screened and then trammed by mule-drawn trains to the fine and coarse ore furnaces, respectively. The fine ore was passed through a rotary drier. The discharge went directly into the feed end of the fine-ore furnace, in a sealed compartment to prevent the escape of any mercury vapors that might be present.

Also in 1917, a 50 ton per day concentrating plant was built to handle material from the old mine dumps. This recycling operation would have dramatically eliminated residual mercury from escaping from calcine piles.

After World War I, the price for mercury fell and it does not appear the Mine was operated from approximately 1924 to 1932. Records show the [New?] Guadalupe Mining Company resumed operations at the Mine in 1932 only. Century Mining Company, Ltd. may have operated the Mine from 1932 to 1934, but if it did, any production would have been relatively minimal.

The Laco Mining Company leased the Mine from 1937 to approximately 1946. As this period covered World War II, there was another increase in mining operations, however short lived. During this time period, the U.S. Bureau of Mines conducted a preliminary survey report of the Mine and apparently conducted some excavation activities itself. Government work included selection of surface areas to be explored, digging 13 trenches, excavating approximately 2,345 cubic yards of material from dumps located at the Mine, dissecting larger dumps by dragline (from which 8, 870 cubic yards were excavated), hand trenching and sampling, and "diamond drilling." Please see the 1964 Professional Paper by Edgar H. Bailey and Donald L. Everhart, cited below.

In 1944, Laco installed an 80 ton per day reduction plant at the mine. Of this, about 30 percent of the tonnage came from pre-existing dumps on site.

Similar to what happened after World War I, there appears to have been a cessation to work at the Mine after World War II. While there was some government exploratory work in the general area throughout the 1950's, we do not believe that mining resumed at the Mine until about 1955, when a W.L. McKinnon and the Palo Alto Mining Company worked sections of the Mine. However, the amount of material mined after World War II appears to have continued to decline with time and was far less than what occurred in earlier time periods.

From approximately 1956 to 1962, the Palo Alto Mining company apparently sub-leased the Mine to seven groups of operators. However, these operators appear to have been individuals or very small entities, and overall production from the Mine appears to have been limited to the treatment of old tailings and placer gravels. The type of recycling work would have continued to reduce the amount of mercury laden sediments that could have been released to the creek.

From 1957 to 1962, the Palo Alto Mining Company entered into a Defense Production Act contract with DMEA for exploration of the Guadalupe Mine. It does not appear that this contract resulted in any new ores being mined.

History of Property Ownership

The Mine was situated on the Northwest quarter of the former Rancho de los Capitancillos. This Rancho was granted by the Mexican government to Justo Larios on September 1, 1842. The portion of the Rancho that incorporated the Mine was confirmed by the U.S. government to the Guadalupe Mining company by a patent issued September 20, 1871.

There have been numerous owners of the Guadalupe Mine property over the years. As indicated above and shown on the enclosed map cross section, the original Guadalupe Mine workings were essentially all under the ground South from the creek. A vertical shaft called the "Engine Shaft" also occurred South of the creek and connected to the "Inclined Shaft" at a depth of approximately 300 feet. This land is now owned by the Mid-Peninsula Regional Open Space District (the "MROSD"). This area was known as the Old Mine. The MROSD now owns approximately 720 acres of land adjacent to and South-Southeast of the GRDC property. The MROSD parcels which comprise this area include County Assessor's Parcel No's. 575-05-001, 575-05-002, 575-05-008 and 575-08-011. GRDC does not know whether mining occurred on all of these parcels or not.

GRDC believes but is not certain that the Guadalupe Mine operations may also have extended to what is now parcel 575-08-001. GRDC believes this parcel is or was owned by Hicks Creek Partners, LLC, a commercial real estate developer. Hicks Creek Partners purchased this land in August 2000 from Edward C. and Judith A. Wooley.

GRDC purchased parcel 575-04-06 (North of the Guadalupe Creek) from James Rolph II in August 1973. This is the only known parcel owned by GRDC where mining activities occurred in the past.

Locations of Mining Wastes at Other Locations

Because no significant mining operations occurred at the Guadalupe Mine after World War II, GRDC actually has very little information about where mining waste, if any, may exist on or under its property. However, to assist in your search, we provide the following:

1) an October 21, 1874 map Showing Location and Altitude of Certain Points in Relation to the Top of the Hoisting Shaft at the Guadalupe Mine; and

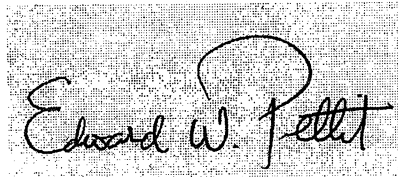
2) a circa 1947 Geological Map and Sections of the Guadalupe-Senator Mine Area, New Almaden District, California (*Geology and Quicksilver Deposits of the New Almaden District Santa Clara County California*, United States Geological Survey Professional Paper 360, by Edgar H. Bailey and Donald L. Everhart, 1964, Plate 14.).

Additional Mining Locations

Finally, although this does not specifically respond to your request about mining waste at the Guadalupe Mine, we refer you to the attached list of Mercury Mines and Occurrences in Santa Clara County, California (New Almaden Mining District), a May 1992 response to a Freedom of Information Act Request issued by the U.S. Geological Survey. This document indicates that there are many potential sources of mercury throughout the area and that creating a TMDL which focuses on only a few sources is neither equitable or scientifically prudent.

We trust the above information responds to your request. Please call me if you have further questions related to this response.

Very truly yours,

A handwritten signature in cursive script, reading "Edward W. Pettit". The signature is written in dark ink on a light-colored, textured background.

Edward W. Pettit

Hill Mine

25-4-8

Water Tunnel

Dump 16.54 ft

Office

Office

Crest Staff

Office

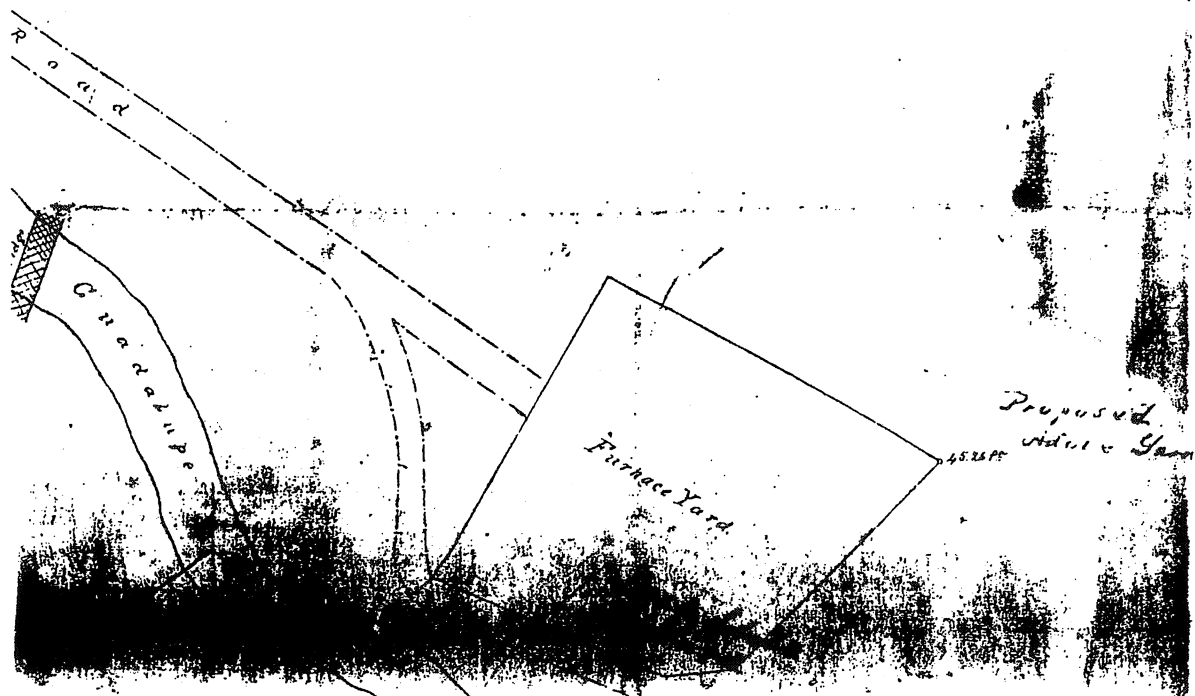
MAP

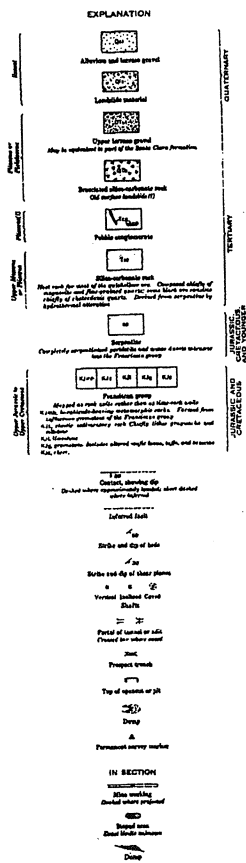
SHOWING THE LOCATION AND ALTITUDE
OF CERTAIN POINTS IN RELATION TO THE
TOP OF THE HOISTING SHAFT AT THE
GUADALUPE MINE.

SURVEYED OCT. 21st 1874

By A. E. Parker, C.E.

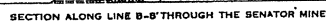
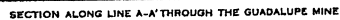
Scale 80' to 1 inch





Photographs by Edgar M. Bailey, Donald L. Everhart, William Fisher, and Donald H. Kessler, 1947
Coordinates and datum are those used by the rearing community that have created the Sandhurst model

Copyright by Donald L. Everett and Donald H. Kasper, 1987



SCALE 1:3400

200 0 200 400 600 800 FEET

CONTOUR INTERVAL 20 FEET
BMVN IS NEAR SEA LEVEL

**GUADALUPE RUBBISH DISPOSAL COMPANY, INC.
STORM WATER POLLUTION PREVENTION PLAN**

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APPENDIX 5

2006-2007 ANNUAL SITE INSPECTION

Appendix 5
2006-2007 Annual Site Inspection
Guadalupe Rubbish Disposal Company
Performed by Becky Zito and John Ferro
On September 18 & 28, 2006

Actions Completed

- | | |
|--|---------|
| 1. Refuse Disposal Area (active area)
Berm built around active area to contain all liquids. High back wall created in active filling area to contain all liquid in active area. Liquid in active filling area feeds directly to the leachate collection system. Area monitored daily for runoff. | 11/2/06 |
| 2. Recycling Processing Area
Berm located around recycling processing area to direct flow to sediment basins. Several hay bails in place to slow flow. Area is monitored daily for debris. | 9/18/06 |
| 3. Fuel Tanks
Underground double walled fuel tank with electronic containment spill monitoring alarm system. The fuel tank has a mechanical overfill protection system. Above ground fuel island with dispenser is inspected daily for spills. Spill kit located at dispenser. An inspection form for the fuel tank area is completed daily. Employees working in fuel island area are trained to respond immediately to spills and the site's SPCC also contains emergency procedures and phone numbers. | 11/2/06 |
| 4. Steam Rack Cleaning Area
Concrete blocks surround the area to contain water in the cleaning area. Ribbon drain is cleaned out every two weeks to ensure proper drainage to the oil water separator and daily monitoring of the oil water holding tank. Holding tank capacity monitored and emptied regularly to the POTW discharge point. | 9/18/06 |
| 5. Gas Recovery Area
Area inspected regularly for leaks and monitored for stormwater flow. Hay bails added to slow flow of stormwater. Sediment basin located near area to contain stormwater. | 11/2/06 |
| 6. Main Road
Concrete culvert with rock socks in place on the upper region of the main road. Hay bails and large sediment basin located on the lower region of the road. Drains with rock socks surrounding entry cleaned of debris and monitored regularly. | 11/2/06 |
| 7. Equipment Maintenance Facility
Rock socks around drains and hay bails in place. Drainage ditch is clear of debris and silt. Drainage areas are monitored regularly. | 11/2/06 |
| 8. Waste Oil Facility
The underground waste oil tank is double walled and has an electronic audible overfill/ spill alarm system. Waste Oil staging area located in a large bin area behind the shop where rainwater will not contact waste oil containments. Spill kits are located in waste oil staging and pumping areas. An inspection sheet for the waste oil tank is completed daily. Employees working in waste oil area are trained to respond immediately to spills and the site's SPCC also contains emergency procedures and phone numbers. | 11/2/06 |

9. Wood Waste Processing Area

11/2/06

Dirt berm built around perimeter of the area. Hay bails are placed throughout the area. Silt from the sediment basin from the previous wet season was removed and the basin floor was compacted.

10. Hazardous Waste Storage Area

9/18/06

The hazardous waste storage shed doors are closed and locked when not in use. The shed has a secondary containment that is inspected regularly to keep the containment clean and dry. All containers stored in the shed are labeled and covered. An inventory sheet is continuously updated and hazardous waste pick-ups are scheduled regularly.

11. Southern Slope Area near Guadalupe Creek

9/28/06-Date Inspected

Southern Slope is graded and vegetated. Runoff controls in place along all roads with drainage channels. All runoff is directed to one of three sediment basins. Drainage controls in place prevent discharge to Guadalupe Creek. No actions required in 2006.

EXHIBIT C

PROOF OF SERVICE

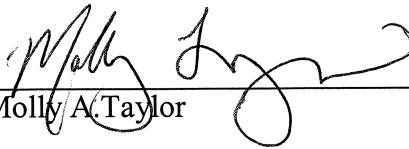
I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, Two Embarcadero Center, Suite 2000, San Francisco, CA 94111-3922. On March 2, 2007, I served the following document(s) by the method indicated below:

GUADALUPE RUBBISH DISPOSAL COMPANY, INC.'S PETITION FOR STATE WATER RESOURCES CONTROL BOARD REVIEW PURSUANT TO WATER CODE § 13320

- ☐ by transmitting via facsimile on this date from fax number 415.391.8269 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 PM and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing. The transmitting fax machine complies with Cal.R.Ct 2003(3).
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- ☐ by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below. A signed proof of service by the process server or delivery service will be filed shortly.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.
- ☐ by transmitting via email to the parties at the email addresses listed below:

**California Regional Water Quality Control Board
San Francisco Bay Region
Bruce H. Wolfe, Executive Officer
Dorothy Dickey, Regional counsel
1515 Clay Street, Suite 1400
Oakland, CA 94612**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 2, 2007, at San Francisco, California.



Molly A. Taylor